

1 McGREGOR W. SCOTT
United States Attorney
2 R. STEVEN LAPHAM
MATTHEW D. SEGAL
3 Assistant U.S. Attorneys
501 I Street, Suite 10-100
4 Sacramento, California 95814
Telephone: (916) 554-2708
5
6
7
8

9 IN THE UNITED STATES DISTRICT COURT FOR THE
10 EASTERN DISTRICT OF CALIFORNIA

11 UNITED STATES OF AMERICA,) 2:04-cr-0069-MCE
12)
Plaintiff,) PRELIMINARY
13) ORDER OF FORFEITURE
v.)
14)
LARRY J. WELLS, and)
15 JEFFREY WELLS,)
16 Defendants.)
17

18 Upon the stipulation and application for preliminary order of
19 forfeiture, the Court makes the following FINDINGS AND ORDERS:

20 1. As the result of the guilty plea of Larry J. Wells to
21 Counts Nineteen and Twenty-two of the Indictment, charging him with
22 money transactions in criminally derived property in violation of 18
23 U.S.C. § 1957, and Counts Seven and Eight, charging him with wire
24 fraud in violation of 18 U.S.C. § 1343; and the guilty plea of
25 Jeffrey Wells to Counts One through Ten of the Indictment, charging
26 him with counts of wire fraud in violation of 18 U.S.C. § 1343, the
27 defendants, and each of them, shall forfeit to the United States:

28 a. All funds frozen in Luxembourg in or about

1 August 2005 pursuant to a Mutual Legal
2 Assistance Treaty Request sent on or about May
10, 2004,

3 b. Real property located at 2905 Bird Rock
4 Road, Pebble Beach, California, APN: 007-661-
004, recorded owners Larry J. Wells and Dianna
5 L. Wells, and

6 c. Approximately \$57,544.12 in U.S. Currency,
7 plus any accrued interest on that amount in lieu
8 of real property located at 906 Vine Avenue,
Roseville, California, APN: 014-321-007, and
substituted as the res herein.

9 2. The Court finds, based upon the stipulation and application
10 for preliminary order of forfeiture, the guilty pleas and plea
11 agreements of Larry J. Wells and Jeffrey Wells, and the Court's
12 files and records in this action, that the above-listed property is
13 subject to forfeiture pursuant to 18 U.S.C. § 982(a)(1) and/or 18
14 U.S.C. § 982(b)(1), incorporating 2 U.S.C. § 853(p).

15 3. The Court finds that the asset identified in paragraph 1.a
16 above as "All funds frozen in Luxembourg in or about August 2005
17 pursuant to a Mutual Legal Assistance Treaty Request sent on or
18 about May 10, 2004" constitutes property traceable to Count Twenty-
19 two, a violation of 18 U.S.C. § 1957, to which the defendant Larry
20 J. Wells has pleaded guilty, and is therefore subject to forfeiture
21 pursuant to 18 U.S.C. § 982(a)(1) and Fed. R. Crim. P. 32.2(b)(1),
22 and that the government has established the requisite nexus between
23 such property and the offense of conviction. The Court orders the
24 preliminary forfeiture of such property to the United States.

25 4. The Court finds that the asset identified in Paragraph 1.b
26 above as "Real property located at 2905 Bird Rock Road, Pebble
27 Beach, California, APN: 007-661-004, recorded owners Larry J. Wells
28 and Dianna L. Wells," and the asset identified in Paragraph 1.c as

1 "Approximately \$57,544.12 in U.S. Currency, plus any accrued
2 interest on that amount in lieu of real property located at 906 Vine
3 Avenue, Roseville, California, APN: 014-321-007, and substituted as
4 the res herein" constitute substitute assets pursuant to 18 U.S.C. §
5 982(b)(1), incorporating 21 U.S.C. § 853(p). Some of the proceeds
6 from defendants offenses of conviction: cannot be located upon the
7 exercise of due diligence; have been transferred or sold to, or
8 deposited with a third party; and have been placed beyond the
9 jurisdiction of the Court.

10 5. The approximately \$57,544.12 in U.S. Currency, plus any
11 accrued interest on that amount in lieu of real property located at
12 906 Vine Avenue, Roseville, California, APN: 014-321-007, shall be
13 seized and held by the U.S. Marshals Service, in its secure custody
14 and control. The Clerk of the Court shall disburse the
15 approximately \$57,544.12 in U.S. Currency deposited on June 9, 2004,
16 on behalf of Jeffrey Wells, plus any interest that has accrued on
17 that amount, to the U.S. Marshals Service. The Clerk of the Court
18 shall waive all service fees on the approximately \$57,544.12 in U.S.
19 Currency.

20 6. As the result of the offenses of conviction set forth in
21 paragraph one above, and based upon the plea agreements of Larry J.
22 Wells and Jeffrey Wells, the Court hereby enters the following money
23 judgments:

24 (i) As against defendant Larry J. Wells the Court enters
25 a money judgment in the amount of \$1,838,885. To the extent that
26 the United States realizes any sums from the forfeiture of assets
27 specified in this preliminary order of forfeiture, the sum of the
28 \$1,838,885 money judgment shall be reduced accordingly. Larry J.

1 Wells and Jeffrey Wells are jointly and severally liable on the
2 money judgment;

3 (ii) As against Jeffrey Wells the Court enters a money
4 judgment in the amount of \$1,838,885. To the extent that the United
5 States realizes any sums from the forfeiture of assets specified in
6 this preliminary order of forfeiture, the sum of the \$1,838,885
7 money judgment shall be reduced accordingly. Jeffrey Wells and
8 Larry J. Wells are jointly and severally liable on the money
9 judgment.

10 7. Upon entry of this Order, the Attorney General of the
11 United States (or his designee) is authorized to request under the
12 terms of the Mutual Legal Assistance Cooperation Treaty with
13 Luxembourg that the appropriate authorities of Luxembourg continue
14 to seize or restrain the asset identified in paragraph 1.a above as
15 "All funds frozen in Luxembourg in or about August 2005 pursuant to
16 a Mutual Legal Assistance Treaty Request sent on or about May 10,
17 2004" during the pendency of these forfeiture proceedings or until
18 further order of this Court.

19 8. Pursuant to 18 U.S.C. § 982 incorporating 21 U.S.C. §
20 853(n) and Local Rule 83-171, the United States forthwith shall
21 publish at least once for three successive weeks in the Daily
22 Recorder (Sacramento County) and the Monterey Herald (Monterey
23 County), newspapers of general circulation located in the county in
24 which the above-described property will be seized, the district in
25 which this action was filed, or in the county in which the above-
26 described property is located, notice of this Order, notice of the
27 Attorney General's intent to dispose of the property in such manner
28 as the Attorney General may direct, and notice that any person,

1 other than the defendants, having or claiming a legal interest in
2 the above-listed property must file a petition with the Court within
3 thirty (30) days of the final publication of the notice or of
4 receipt of actual notice, whichever is earlier. The Attorney
5 General (or his designee) is further authorized to request pursuant
6 to the Mutual Legal Assistance Cooperation Treaty with Luxembourg
7 and other means of obtaining cooperation that the appropriate
8 authorities of Luxembourg cooperate and assist the United States in
9 publishing notice of forfeiture in a newspaper of general
10 circulation within Luxembourg, and that such authorities further
11 cooperate and assist the United States by sending direct
12 notification to each person having a known and stated interest in
13 the asset identified in paragraph 1.a above, and which for persons
14 directly notified will substitute for published notification, in
15 addition to taking whatever additional steps are necessary to
16 provide notice, reasonably calculated under all the circumstances,
17 to apprise interested parties of the pendency of the action. The
18 published notices shall state that the petition shall be for a
19 hearing to adjudicate the validity of the petitioner's alleged
20 interest in the property, shall be signed by the petitioner under
21 penalty of perjury, and shall set forth the nature and extent of the
22 petitioner's right, title or interest in the forfeited property and
23 any additional facts supporting the petitioner's claim and the
24 relief sought. The Attorney General (or his designee) may also, to
25 the extent practicable, provide direct written notice to any person
26 known to have alleged an interest in the above-listed property that
27 is the subject of the Order of Forfeiture, as a substitute for
28 published notice as to those persons so notified. No notice

1 specified in this paragraph is required to the extent that this
2 Order consists solely of a money judgment against Larry J. Wells or
3 Jeffrey Wells. Rule 32.2(c)(1).

4 9. Any person, other than the above-named defendants,
5 asserting a legal interest in the property may, within thirty days
6 of the final publication of notice or receipt of notice, whichever
7 is earlier, petition the Court for a hearing without a jury to
8 adjudicate the validity of his alleged interest in the property, and
9 for an amendment of this order of forfeiture, pursuant to 18 U.S.C.
10 § 982(b)(1) (incorporating 21 U.S.C. §§ 853(c) & (n)). Any petition
11 filed by a third party asserting an interest in the property shall
12 be signed by the petitioner under penalty of perjury and shall set
13 forth the nature and extent of the petitioner's right, title, or
14 interest in the property, the time and circumstances of the
15 petitioner's acquisition of the right, title or interest in the
16 property, and additional facts supporting the petitioner's claim and
17 the relief sought.

18 10. After the disposition of any motion filed under Fed. R.
19 Crim. P. 32.2(c)(1)(A), and before a hearing on the petition,
20 discovery may be conducted in accordance with the Federal Rules of
21 Civil Procedure upon a showing that such discovery is necessary or
22 desirable to resolve factual issues.

23 11. If no third party files a timely claim, this Order shall
24 become the Final Order of Forfeiture, as provided by Fed. R. Crim.
25 P. 32.2(c)(2). If a petition is timely filed, upon adjudication of
26 all third-party interests, if any, this Court will enter a Final
27 Order of Forfeiture pursuant to 18 U.S.C. § 982(a)(1) and/or 18
28 U.S.C. § 982(b)(1), incorporating 21 U.S.C. § 853(p), in which all

1 such interests, if any, will be addressed. The United States shall
2 have clear title to the property following the Court's disposition
3 of all third-party interests or, if none, following the expiration
4 of the period provided in 21 U.S.C. 853(n)(2) (as incorporated by 18
5 U.S.C. § 982(b)(1)).

6 12. The Court shall retain jurisdiction to enforce this Order,
7 and to amend it as necessary, pursuant to Fed. R. Crim. P. 32.2(e).

8 IT IS SO ORDERED.

9 Dated: February 12, 2007

10
11 

12 MORRISON C. ENGLAND, JR.
13 UNITED STATES DISTRICT JUDGE
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28